

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY A. HANNAFORD,

Defendant-Appellant.

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UNPUBLISHED

September 16, 2003

No. 240817

Wayne Circuit Court

LC No. 01-007546-01

Before: Fitzgerald, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Defendant Terry A. Hannaford appeals as of right her bench trial convictions of operating a vehicle under the influence of intoxicating liquor (OUIL) causing death, MCL 257.625(4), operating a vehicle with license suspended causing death, MCL 257.904(4), and failure to stop at the scene of a personal injury accident, MCL 257.617a. The trial court sentenced defendant to concurrent sentences of ten to fifteen years' imprisonment on the convictions for OUIL causing death and operating a vehicle with license suspended causing death, and 240 days in jail with credit for time served on the conviction for failure to stop at a personal injury accident. We affirm.

On January 25, 2001, on Mt. Elliott Street in the City of Detroit, defendant's vehicle crossed the median at a high rate of speed and collided with a Geo automobile driven by Suzie Coleman. As a result of the collision, Coleman's four-year-old grandson, asleep in the back seat, was killed. Coleman was ejected from the car and suffered numerous injuries, and her niece, a front-seat passenger, was also injured.

On appeal, defendant first contends that the trial court erred in denying her motion for a directed verdict as to the charges of OUIL causing death and operating a motor vehicle with license suspended causing death. In a related argument, defendant also argues that the evidence was insufficient to support her convictions on these two charges. We disagree.

When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecution, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Werner*, 254 Mich App 528, 530-531; 659 NW2d 688 (2002); *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). Similarly, a challenge to the sufficiency of the evidence in a

bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). The trial court's findings of fact are reviewed for clear error, giving regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C); *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A finding of fact is clearly erroneous if, after review of the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.* Circumstantial evidence and the reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The requisite elements of the offense of OUIL causing death are (1) the defendant was operating a motor vehicle on a public highway or other place open to the general public while under the influence of intoxicating liquor, (2) the defendant voluntarily decided to operate the vehicle knowing that he or she had consumed alcohol and might be intoxicated, and (3) the defendant's intoxicated driving was a substantial cause of the victim's death. MCL 257.625(4); *People v Lardie*, 452 Mich 231, 234, 259-260; 551 NW2d 656 (1996).

Here, defendant maintains that there was no evidence that she was under the influence of intoxicating liquor or was impaired at the time of this collision. She notes that she was arrested a substantial time later in the day after the accident, at which time a police officer smelled alcohol on her breath. However, defendant contends that neither witnesses at the scene nor the owner of the house she went to immediately after the accident testified that she was under the influence at that time. Thus, defendant argues that the prosecution failed to show what her condition was at the time of the accident. We disagree.

In its findings of fact, the trial court set forth in summarized fashion the evidence that supported the conclusion that defendant had been intoxicated while driving that day. Two witnesses testified that defendant smelled strongly of alcohol. One witness, an acquaintance of defendant, testified that she smelled a beer odor on defendant within minutes of the crash when defendant came to her house near the accident scene. The second witness, a police officer, stated that he smelled a very strong odor of intoxicants on defendant when he took her to a police station approximately two hours after the crash. He further testified that defendant had slurred speech at that time.

Although defendant testified that she had not been drinking and that after the accident she walked around and did not eat or drink anything, the trial court found her denial to be incredible in light of the evidence introduced at trial. Witnesses to the accident testified that defendant was driving at a high rate of speed on a residential street – an estimated eighty to ninety miles per hour – and crossed into the opposing lane of Mt. Elliott where her car struck the victim's automobile. Defendant walked toward the crowd of people around the cars, asked if everybody was all right, and then walked away in the opposite direction.

Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could be persuaded that the essential elements of OUIL causing death were

proved beyond a reasonable doubt, and thus the trial court did not err in denying defendant's motion for directed verdict. Although defendant offered a different account, the trial court found her testimony to be incredible. After a bench trial, this Court will not resolve witness credibility anew. *People v Jackson*, 178 Mich App 62, 64-65; 443 NW2d 423 (1989); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Although no breathalyzer or field sobriety tests were ever administered to defendant, it can reasonably be inferred that defendant was driving while intoxicated in light of the evidence regarding defendant's erratic driving at a very high speed immediately before the accident, a witness' unequivocal testimony that she smelled a noticeable beer odor on defendant when she arrived at the witness' house minutes after the accident, and the police officer's testimony that when he arrested defendant two hours later, she had slurred speech and a very strong odor of intoxicants. The evidence viewed in a light most favorable to the prosecution is sufficient to sustain defendant's conviction for OUIL causing death.

With regard to the charge of operating a motor vehicle with license suspended causing death, defendant nebulously asserts on appeal that her driver's license was not suspended at the time of the accident. However, a review of the record indicates that a certified copy of defendant's driving record was admitted at trial, which indicated that defendant's license was indefinitely suspended at the time of the fatal accident. Thus, there was sufficient evidence produced to allow a rational trier of fact to find guilt beyond a reasonable doubt on this charge.

Next, defendant argues that her convictions for operating a vehicle with license suspended causing death and OUIL causing death violate the prohibition against double jeopardy set forth in the Michigan Constitution, Const 1963, art 1, § 15. Contrary to defendant's assertion, the instant case does not implicate the double jeopardy protection against successive prosecutions after a conviction, but rather involves the protection against multiple punishments for the same offense. See, generally, *People v Herron*, 464 Mich 593, 599-600; 628 NW2d 528 (2001).

A double jeopardy challenge constitutes a question of law that this Court reviews de novo on appeal. *Herron*, *supra* at 599; *People v Kulpinski*, 243 Mich App 8, 12; 620 NW2d 537 (2000). "Statutes prohibiting conduct that is violative of distinct social norms can generally be viewed as separate and amenable to permitting multiple punishments." *People v Robideau*, 419 Mich 458, 487; 355 NW2d 592 (1984). As this Court explained in *People v Squires*, 240 Mich App 454, 457; 613 NW2d 361 (2000):

Although the Double Jeopardy Clause restricts courts from imposing more punishment than that intended by the Legislature, the Legislature may authorize cumulative punishment of the same conduct under two different statutes. *People v Denio*, 454 Mich 691, 709; 564 NW2d 13 (1997). Whether the Legislature intended multiple punishments at a single trial for persons who commit the offenses in question is the determining factor under the Double Jeopardy Clause. *Id.* at 706. Determination of legislative intent involves traditional considerations of the subject, language, and history of the statutes. *Id.* at 708. Factors to consider include whether each statute prohibits conduct violative of a social norm distinct from the norm protected by the other, the amount of punishment authorized by each statute, whether the statutes are hierarchical or cumulative, the elements of each offense, and any other factors indicative of legislative intent. *Id.*

See also *Kulpinski, supra* at 12-13.

Here, distinct societal norms are targeted by each statute. MCL 257.625(4) aims at preventing the operation of a motor vehicle with or without a license where the operation causes the death of another and the driver is under the influence of an intoxicating liquor. MCL 257.904(4) was enacted to address the operation of a motor vehicle by a person whose license has been suspended and where death occurs as a result of the vehicle operation. In the former, it is the operation of a vehicle under the influence of liquor that is prohibited. See *Kulpinski, supra* at 22. In the latter, it is the simple operation of a motor vehicle with a suspended driver's license that is the central focus of the statute.

Moreover, for a conviction under MCL 257.904(4), the prosecution must prove that the driver had a suspended license. Under MCL 257.625(4), that fact is inconsequential because it is the operation of a vehicle while under the influence of alcohol that is banned. Thus, operating a vehicle with license suspended causing death requires proof of an element that the other does not. Finally, we note that the amount of punishment for each statute does not involve a hierarchy of offenses with staggered or increased punishment. *Squires, supra*. Accordingly, where legislative intent reveals conduct addressed by statutory language violative of distinct social norms, we conclude that the Legislature intended that the offenses in question be punished separately. Thus, defendant's convictions for OUIL causing death and driving with license suspended causing death do not violate double jeopardy. *Id.*; *Kulpinski, supra*.

Defendant lastly maintains that the trial court abused its discretion in sentencing her to a term of imprisonment substantially longer than the highest end of the sentencing guidelines. Defendant contends that there were no objective and verifiable factors constituting substantial and compelling reasons for the trial court to make an upward departure from the highest end of the sentencing guidelines in imposing sentence. We disagree.

In reviewing a departure from the guidelines range, the existence of a sentencing factor is a factual determination subject to review for clear error, the determination that the factor is objective and verifiable is reviewed as a matter of law, and the trial court's determination that the factors constitute substantial and compelling reasons for departure is reviewed for an abuse of discretion. *People v Babcock*, \_\_\_ Mich \_\_\_; 666 NW2d 231 (2003) (Docket No. 121310, issued 7/31/03), slip op at 18. "An abuse of discretion occurs when the trial court chooses an outcome falling outside the permissible principled range of outcomes." *Id.*, slip op at 29.

Under the legislative sentencing guidelines, a trial court is required to impose a sentence within the guidelines range unless there is a "substantial and compelling" reason for departing from this range. MCL 769.34(3); *Babcock, supra*, at slip op at 7; *People v Hedgewood*, 465 Mich 432, 439; 636 NW2d 127 (2001). A "substantial and compelling" reason must be objective and verifiable and must irresistibly hold the attention of the court. *Id.*, slip op at 8-9, quoting *People v Fields*, 448 Mich 58, 62; 528 NW2d 176 (1995). A trial court may not depart from a sentencing guidelines range based on an offense characteristic or offender characteristic already considered in determining the guidelines range unless the court finds, based on the facts in the record, that the characteristic was given inadequate or disproportionate weight. MCL 769.34(3)(b); *Babcock, supra*, slip op at 12, 21.

In this case, the trial court sentenced defendant to 240 days in jail with credit for time served on the conviction for failure to stop at a personal injury accident, and to concurrent terms of imprisonment of ten to fifteen years on her convictions for OUIL causing death and operating a vehicle with license suspended causing death. The sentencing information report recommended a minimum sentence range of four years two months to eight years four months for these latter two convictions. Thus, the trial court exceeded the calculated sentencing guidelines range by approximately twenty months, imposing a minimum sentence of ten years for the two felony convictions.

In sentencing defendant, the trial court, having heard defendant testify at trial and during allocution, noted that defendant's conduct showed total disregard for the law and life and safety of others. Defendant had an "outrageous driving record" – she repeatedly drove a car after being convicted of other drunk driving offenses and having her license suspended. The court stated that defendant was in total denial regarding the fatal accident – she continuously claimed, contrary to the testimony of witnesses at trial, that she was not intoxicated at the time of the accident; she refused to undergo a psychiatric examination; she alleged that the police tampered with the accident scene by placing an unknown and smashed vehicle at the scene; and she maintained that the complainant had stopped in front of her, causing the accident. The trial court concluded that defendant was "unredeemable and unrepentant" and therefore exceeded the guidelines range in sentencing defendant.

Faced with defendant's horrible driving record which showed other offenses of driving while under the influence and driving continually with her license suspended, the court voiced its reasons for exceeding the guidelines. We are satisfied that these factors articulated by the trial court – defendant's poor driving record and her action of driving continually with her license suspended – are objective and verifiable, either from physical evidence, testimonial evidence, or documentary evidence, and present substantial and compelling reasons for the upward departure under circumstances where a five-year-old boy was killed by defendant's conduct. The trial court therefore did not abuse its discretion when departing from the sentencing guidelines. *Babcock, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Richard Allen Griffin  
/s/ Henry William Saad